

House Engrossed Senate Bill

FILED

MICHELE REAGAN

SECRETARY OF STATE

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

CHAPTER 329

SENATE BILL 1072

AN ACT

AMENDING SECTIONS 12-348 AND 12-910, ARIZONA REVISED STATUTES; RELATING TO
JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-348, Arizona Revised Statutes, is amended to
3 read:

4 12-348. Award of fees and other expenses against the state or
5 a city, town or county; reduction or denial of
6 award; application; basis for amount of award;
7 source of award; definitions

8 A. In addition to any costs that are awarded as prescribed by
9 statute, a court shall award fees and other expenses to any party other
10 than this state or a city, town or county that prevails by an adjudication
11 on the merits in any of the following:

12 1. A civil action brought by this state or a city, town or county
13 against the party.

14 2. A court proceeding to review a state agency decision pursuant to
15 chapter 7, article 6 of this title or any other statute authorizing
16 judicial review of agency, city, town or county decisions.

17 3. A proceeding pursuant to section 41-1034.

18 4. A special action proceeding brought by the party to challenge an
19 action by this state or a city, town or county against the party.

20 5. An appeal by this state to a court of law from a decision of the
21 personnel board under title 41, chapter 4, article 6.

22 6. A civil action brought by the party to challenge the seizure and
23 sale of personal property by this state or a city, town or county.

24 7. A CIVIL ACTION BROUGHT BY THE PARTY TO CHALLENGE A RULE,
25 DECISION, GUIDELINE, ENFORCEMENT POLICY OR PROCEDURE OF A STATE AGENCY OR
26 COMMISSION THAT IS STATUTORILY EXEMPT FROM THE RULEMAKING REQUIREMENTS OF
27 TITLE 41, CHAPTER 6 ON THE GROUNDS THAT THE RULE, DECISION, GUIDELINE,
28 ENFORCEMENT POLICY OR PROCEDURE IS NOT AUTHORIZED BY STATUTE OR VIOLATES
29 THE CONSTITUTION OF THE UNITED STATES OR THIS STATE.

30 B. In addition to any costs that are awarded as prescribed by
31 statute, except as provided in subsection C of this section, a court may
32 award fees and other expenses to any party, other than this state or a
33 city, town or county, that prevails by an adjudication on the merits in an
34 action brought by the party against this state or a city, town or county
35 challenging:

36 1. The assessment, collection or refund of taxes or in an action
37 brought by this state or a city, town or county against the party to
38 enforce the assessment or collection of taxes or the denial of a refund.

39 2. The adequacy or regularity of notice of delinquent taxes.

40 3. The regularity of sales of property for delinquent taxes.

41 C. The court in its discretion may deny the award provided for in
42 this section or may reduce the award if it finds that any of the following
43 applies:

44 1. During the course of the proceeding the prevailing party unduly
45 and unreasonably protracted the final resolution of the matter.

1 2. The reason that the party other than this state or a city, town
2 or county has prevailed is an intervening change in the applicable law.

3 3. The prevailing party refused an offer of civil settlement that
4 was at least as favorable to the party as the relief ultimately granted.

5 D. A party may apply pursuant to the applicable procedural rules
6 for an award of attorney fees and other expenses authorized under this
7 section and shall include as part of the application evidence of the
8 party's eligibility for the award and the amount sought, including an
9 itemized statement from the attorneys and experts stating the actual time
10 expended in representing the party and the rate at which the fees were
11 computed.

12 E. The court shall base any award of fees as provided in this
13 section on prevailing market rates for the kind and quality of the
14 services furnished, except that:

15 1. An expert is not eligible for compensation at a rate in excess
16 of the highest rate of compensation for experts paid by this state or a
17 city, town or county except for awards made pursuant to subsection B of
18 this section.

19 2. Except for awards made pursuant to subsection B of this section,
20 the award of attorney fees may not exceed the amount that the prevailing
21 party has paid or has agreed to pay the attorney or a maximum amount of
22 seventy-five dollars per hour unless the court determines that an increase
23 in the cost of living or a special factor, such as the limited
24 availability of qualified attorneys for the proceeding involved, justifies
25 a higher fee.

26 3. For awards made pursuant to subsection B of this section, the
27 award of attorney fees may not exceed the amount that the prevailing party
28 has paid or agreed to pay the attorney or a maximum amount of three
29 hundred fifty dollars per hour.

30 4. Except for awards made pursuant to subsection B of this section,
31 an award of fees against a city, town or county as provided in this
32 section shall not exceed ten thousand dollars.

33 5. For awards made pursuant to subsection B of this section, an
34 award of fees against this state or a city, town or county shall not
35 exceed seventy-five thousand dollars for fees incurred at each level of
36 judicial appeal.

37 6. For each calendar year beginning from and after December 31,
38 2015, the income dollar amounts for maximum awards made pursuant to
39 ~~subsections~~ SUBSECTION B ~~and E~~ of this section shall be adjusted by the
40 attorney general according to the average annual change in the
41 metropolitan Phoenix consumer price index published by the United States
42 bureau of labor statistics. The revised dollar amounts shall be raised to
43 the nearest whole dollar. The income dollar amounts may not be revised
44 below the amounts prescribed in the prior calendar year.

1 F. The particular state agency over which a party prevails shall
2 pay the fees and expenses awarded as provided in this section from any
3 monies appropriated to the agency for that purpose. If no agency is
4 involved or if an agency fails or refuses to pay fees and other expenses
5 within thirty days after demand by a person who has received an award
6 pursuant to this section, and if no further review or appeals of the award
7 are pending, the person may file a claim for the fees and other expenses
8 with the department of administration, which shall pay the claim within
9 thirty days, in the same manner as an uninsured property loss under title
10 41, chapter 3.1, article 1. If, at the time the agency failed or refused
11 to pay the award, it had appropriated monies either designated or
12 assignable for the purpose of paying awards, the legislature shall reduce
13 the agency's operating appropriation for the following year by the amount
14 of the award and shall appropriate the amount of the reduction to the
15 department of administration as reimbursement for the loss.

16 G. A city, town or county shall pay fees and expenses awarded as
17 provided in this section within thirty days after demand by a party who
18 has received an award if no further review or appeal of the award is
19 pending.

20 H. This section does not:

21 1. Apply to an action arising from a proceeding before this state
22 or a city, town or county in which the role of this state or a city, town
23 or county was to determine the eligibility or entitlement of an individual
24 to a monetary benefit or its equivalent, to adjudicate a dispute or issue
25 between private parties or to establish or fix a rate.

26 2. Apply to proceedings brought by this state pursuant to title 13
27 or 28.

28 3. Entitle a party to obtain fees and other expenses incurred in
29 making an application for an award pursuant to this section for fees and
30 other expenses.

31 4. Apply to proceedings involving eminent domain, foreclosure,
32 collection of judgment debts or proceedings in which this state or a city,
33 town or county is a nominal party.

34 5. Personally obligate any officer or employee of this state or a
35 city, town or county for the payment of an award entered under this
36 section.

37 6. Apply, except as provided in subsection A, paragraph 5 of this
38 section, to proceedings involving the personnel board under title 41,
39 chapter 4, article 6.

40 7. Apply to proceedings brought by a city, town or county pursuant
41 to title 13 or 28.

42 8. Apply to proceedings brought by a city, town or county on
43 collection of taxes or pursuant to traffic ordinances or to criminal
44 proceedings brought by a city, town or county on ordinances which contain
45 a criminal penalty or fine for violations of those ordinances.

1 I. For the purposes of this section:

2 1. "Fees and other expenses" means the reasonable expenses of
3 expert witnesses, the reasonable cost of any study, analysis, engineering
4 report, test or project which the court finds to be directly related to
5 and necessary for the presentation of the party's case and reasonable and
6 necessary attorney fees, and in the case of an action to review an agency
7 decision pursuant to subsection A, paragraph 2 of this section, all fees
8 and other expenses that are incurred in the contested case proceedings in
9 which the decision was rendered.

10 2. "Party" means an individual, partnership, corporation, limited
11 liability company, limited liability partnership, association or public or
12 private organization.

13 3. "State" means this state and any agency, officer, department,
14 board or commission of this state.

15 4. "Taxes" includes all taxes and related levies and assessments
16 addressed in section 12-163.

17 Sec. 2. Section 12-910, Arizona Revised Statutes, is amended to
18 read:

19 12-910. Scope of review

20 A. An action to review a final administrative decision shall be
21 heard and determined with convenient speed. If requested by a party to an
22 action within thirty days after filing a notice of appeal, the court shall
23 hold an evidentiary hearing, including testimony and argument, to the
24 extent necessary to make the determination required by subsection E of
25 this section. The court may hear testimony from witnesses who testified
26 at the administrative hearing and witnesses who were not called to testify
27 at the administrative hearing.

28 B. Relevant and admissible exhibits and testimony that were not
29 offered during the administrative hearing shall be admitted, and
30 objections that a party failed to make to evidence offered at the
31 administrative hearing shall be considered, unless either of the following
32 is true:

33 1. The exhibit, testimony or objection was withheld for purposes of
34 delay, harassment or other improper purpose.

35 2. Allowing admission of the exhibit or testimony or consideration
36 of the objection would cause substantial prejudice to another party.

37 C. For review of final administrative decisions of agencies that
38 are exempt from sections 41-1092.03 through 41-1092.11, pursuant to
39 section 41-1092.02, the trial shall be de novo if trial de novo is
40 demanded in the notice of appeal or motion of an appellee other than the
41 agency and if a hearing was not held by the agency or the proceedings
42 before the agency were not stenographically reported or mechanically
43 recorded so that a transcript might be made. On demand of any party, if a
44 trial de novo is available under this section, it may be with a jury,

1 except that a trial of an administrative decision under section 25-522
2 shall be to the court.

3 D. The record in the superior court shall consist of the record of
4 the administrative proceeding, and the record of any evidentiary hearing,
5 or the record of the trial de novo.

6 E. AFTER REVIEWING THE ADMINISTRATIVE RECORD AND SUPPLEMENTING
7 EVIDENCE PRESENTED AT THE EVIDENTIARY HEARING, the court may affirm,
8 reverse, modify or vacate and remand the agency action. ~~The court shall~~
9 ~~affirm the agency action unless after reviewing the administrative record~~
10 ~~and supplementing evidence presented at the evidentiary hearing the court~~
11 ~~concludes that the action is not supported by substantial evidence, is~~
12 ~~contrary to law, is arbitrary and capricious or is an abuse of~~
13 ~~discretion.~~ THE COURT SHALL AFFIRM THE AGENCY ACTION UNLESS THE COURT
14 CONCLUDES THAT THE AGENCY'S ACTION IS CONTRARY TO LAW, IS NOT SUPPORTED BY
15 SUBSTANTIAL EVIDENCE, IS ARBITRARY AND CAPRICIOUS OR IS AN ABUSE OF
16 DISCRETION.

APPROVED BY THE GOVERNOR MAY 22, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 22, 2017.

Passed the House May 9, 20 17,

by the following vote: 34 Ayes,

21 Nays, 5 Not Voting

U. R. Egan
Speaker of the House
Pro Tempore

Jim Doherty
Chief Clerk of the House

Passed the Senate February 28, 20 17,

by the following vote: 17 Ayes,

13 Nays, 0 Not Voting

Steven B. Yoder
President of the Senate

Susan Oakes
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR~~

~~This Bill was received by the Governor this~~

~~_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

S.B. 1072

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State~~

~~this _____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 10, 2017

by the following vote: 16 Ayes,

13 Nays, 1 Not Voting

Steve B. Goddard
President of the Senate

Deborah Oakes
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

10th day of May, 2017

at 6:20 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 22nd day of

May 2017

at 3:27 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 22 day of May, 2017

at 6:34 o'clock P M.

Michelle Reagan
Secretary of State